

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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May 6, 2013

Captain Duane Harris
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File # 12-0359
L.A.S.D. File # 912-06261-2812-055

Dear Captain Harris:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 23, 2012, non-fatal shooting of Antonio Montoya by off-duty Los Angeles County Sheriff's Deputy Calvert Rosborough. It is our conclusion that Deputy Rosborough acted in lawful self-defense.

The District Attorney's Command Center was notified of the shooting on May 23, 2012, at approximately 1:00 p.m. The District Attorney Response Team (DART), comprised of Deputy District Attorney Fernando Guzman and District Attorney Senior Investigator [redacted] responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office, by Investigators Sylvia Brossoit and Dan McElderry, LASD Homicide Bureau. Deputy Rosborough provided a voluntary statement to investigators which was considered as part of this analysis.

FACTUAL ANALYSIS

On May 23, 2012, at approximately 10:45 a.m., Calvert Rosborough returned to his home after working his shift at the LASD Transportation Bureau.[1] He noticed that the front door was open and the door frame was damaged. He armed himself with his personal .40 caliber handgun and entered the residence.

Rosborough saw his 12 gauge shotgun on the sofa in the living room.[2] He checked the rest of the house and found no one present. The gun safe in the middle bedroom was open and three

[1] Rosborough was an off-duty Sheriff's Deputy.
[2] He had left the shotgun in a locked safe, in a bedroom of the residence.

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weapons were missing. The weapons were a .38 caliber revolver, a 9 mm. semiautomatic handgun and the shotgun.

After calling the LASD Compton Station to report the burglary, he called his [redacted] and went into the master bedroom. While in the bedroom Rosborough heard voices coming from the family room. He walked into a bathroom that leads to the family room. Entering the bathroom from the opposite direction was a suspect carrying Rosborough's shotgun. This suspect was later identified as Jonathan Vargas. Behind Vargas, Rosborough saw a second suspect, later identified as Antonio Montoya.

Both suspects ran into the family room. Believing that both suspects were armed with his firearms and fearing for his safety, Rosborough fired his weapon in their direction. Both suspects went toward the living room. Montoya fell to the ground in the living room and Vargas ran out the front door and out of view. Rosborough believed that he fired his weapon twice.[3]

Further Investigation

Montoya admitted involvement in the burglary and identified Vargas as his accomplice. Vargas denied involvement. Numerous items stolen from Rosborough's home were found in the residence where Vargas was living.

Both Montoya and Vargas were convicted of the residential burglary of Rosborough's home. Montoya was sentenced to 11 years in state prison. Vargas was sentenced to 16 years in state prison.[4]

Sheriff's investigators canvassed the neighborhood but found no eye-witnesses to the shooting. Several neighbors stated that they only heard gunshots.

Injuries

Montoya was treated for gunshot wounds to the left forearm, abdomen and buttocks. Surgery was performed at Saint Francis Medical Center in Lynwood, California and follow-up treatment was provided at LAC-USC Medical Center.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed he or others were in imminent danger of great bodily injury or death. *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

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[3] Further investigation revealed that Rosborough fired his weapon three times.
[4] The Los Angeles Superior Court case number is TA123339.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

Under California law, a peace officer is entitled to use deadly force to capture a dangerous person who has committed a felony. A dangerous person is defined as one who (a) poses significant threat of death or serious bodily injury to the person attempting the apprehension or others, or (b) has committed a forcible and atrocious felony. *People v. Ceballos* (1974) 12 Cal.3d 470. A forcible and atrocious felony is one that by its nature and manner of its commission reasonably creates a fear of death or great bodily injury. CALCRIM No. 505 (bench notes); see also, *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516 ("police may use reasonable force to make an arrest, prevent escape or overcome resistance, and need not desist in the face of resistance..." [and] in virtue of a police officer's duty to act affirmatively to protect the public, a police officer is "entitled to the even greater use of force than might be, in the same circumstances, required for self-defense").

The circumstances dictate that we should analyze this case from the additional perspective that Rosborough was protecting himself and his residence. California law presumes that a resident reasonably feared imminent death or great bodily injury to himself or to a member of his family if an intruder, who was not a member of the household, unlawfully and forcefully entered his home, and the resident used force against the intruder inside the home. CALCRIM No. 3477.

CONCLUSION

The evidence examined in this investigation shows that Deputy Rosborough entered his home and discovered that he was the victim of burglary. After searching the residence and finding no one inside, he reported the burglary to LASD.

The burglary suspects returned to the residence presumably to remove more property. Rosborough confronted them, seeing that Vargas was armed with Rosborough's shotgun. Knowing that two handguns had been removed from his safe, Rosborough assumed that both suspects were armed. In fear for his safety, Rosborough fired at the suspects, striking Montoya.

Based on our examination of the evidence, we conclude that Deputy Rosborough acted in lawful self-defense. Therefore, we are closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

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c: Deputy Calvert Rosborough, #[redacted]